



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2016-0256]

RIN 1625-AA09

Drawbridge Operation Regulation; Fox River, DePere to Oshkosh, WI.

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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SUMMARY: The Coast Guard proposes to modify the operating schedule for all drawbridges over the Fox River between DePere, WI and Oshkosh, WI. A review of the current regulation was requested by the Wisconsin Department of Transportation and the Fox River Navigational System Authority.

DATES: Comments and related material must reach the Coast Guard on or before: [Insert date 45 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2016-0256 using Federal eRulemaking Portal at <http://www.regulations.gov>.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216-902-6085, e-mail Lee.D.Soule@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive Order
FR	Federal Register
NEPA	National Environmental Policy Act of 1969
NPRM	Notice of proposed rulemaking
RFA	Regulatory Flexibility Act of 1980
SNPRM	Supplemental notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code
WIS-DOT	Wisconsin Department of Transportation
FRNSA	Fox River Navigational System Authority
CN-RR	Canadian National Railroad

II. Background, Purpose and Legal Basis

This proposed rule was requested by WIS-DOT and FRNSA to align drawbridge operating schedules with lock schedules, and make the yearly schedules permanent and easier to follow for the entire river system. The drawbridge and lock schedules that have been set each year by local authorities have generally followed the same dates as the dates in this proposed rule for the beginning and end of the navigation season; April through October. These periods are generally accepted as the established annual schedules by vessel operators and bridge operators on the river system. With no current winter schedule for drawbridges, this proposed rule

will also establish permanent winter operating schedules for all drawbridges over Fox River between DePere and Oshkosh, WI.

### III. Discussion of Proposed Rule

The Coast Guard proposes to amend the Fox River regulation at 33 CFR 117.1087. This proposed rule removes George Street Bridge from the regulation, establishes consistent annual dates for drawbridge schedules between river miles 7.13 and 58.3, eliminates currently exempted bridge opening times during certain days and times in Oshkosh, makes permanent the requirement for vessels to provide 2-hours advance notice between midnight and 8 a.m., and establishes the winter bridge operating schedules throughout the entire river system.

Currently, the regulation for Fox River drawbridges includes the opening schedule for drawbridges in Green Bay, WI, where large commercial vessel traffic continues to transit. This proposed rule does not include any changes to the schedules for drawbridges over the commercial ship channel in Green Bay.

The sections of the current regulation that includes all other drawbridges between river mile 7.13 in DePere, WI at the DePere Pedestrian Bridge, to river mile 58.3 in Oshkosh, WI, describe inconsistent dates and times for required drawbridge openings, particularly for the four highway drawbridges in Oshkosh. They also include a reference to George Street

Bridge at mile 7.27. George Street Bridge has been removed since the last update of these regulations. The Oshkosh drawbridges in the current regulation contain exemptions during certain dates and times where the drawbridges are not required to open for vessels or vessels must provide advance notice prior to passing during nighttime hours.

This proposed rule establishes the requirement for all drawbridges, except the Canadian National Railroad (CN-RR) Bridge at mile 55.72 in Oshkosh, to open on signal between the hours of 8 a.m. and midnight each day from April 27 to October 7 every year. This schedule would match the lock schedule established by FRNSA and drawbridge schedules used by WIS-DOT. Between the hours of midnight and 8 a.m., except for the CN-RR Bridge in Oshkosh, all drawbridges would open for vessels if at least 2-hours advance notice of arrival is provided.

The CN-RR Bridge at mile 55.72 in Oshkosh is located where Fox River feeds into the southwest section of Lake Winnebago. The portion of Fox River in the Oshkosh area, and Lake Winnebago, are among the busiest portions of the Fox River System for recreational vessel traffic. The CN-RR Bridge provides 6 feet of vertical clearance in the closed position and prevents most vessels from passing under the bridge, thereby requiring the drawbridge to open regularly for vessels. This is also the location of first responders and public safety vessels that may require the bridge to open at

any time to perform rescue or emergency operations on Lake Winnebago. Vessels in distress or seeking shelter from weather on Lake Winnebago may also need the CN-RR Bridge to open at any time. A delay in bridge openings at this location may endanger life or property and is therefore exempted from the proposed 2-hour advance notice requirement from vessels for all other drawbridges between midnight and 8 a.m.

All drawbridges would be required to open if at least 12-hours advance notice is provided prior to passing between October 8 and April 26 each year.

The proposed dates, times, and conditions have been employed by local authorities for approximately 10 years and are generally accepted by vessel operators in the area as established conditions. The proposed dates, times, and conditions have also been reviewed and accepted by WIS-DOT and FRNSA during the development of this NPRM.

#### IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders and discuss First Amendment rights of protestors.

##### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to

assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the ability that vessels can still transit the bridge given advanced notice during times when vessel traffic is at its lowest. The proposed drawbridge schedule is virtually the same as has been used by vessel operators in the area for approximately 10 years.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant

economic impact on a substantial number of small entities.

This proposed rule standardizes drawbridge schedules that have been in place and would not have a significant economic impact on any vessel owner or operator because the bridges will open with advance notice during low traffic times on the waterway or when ice conditions hinder normal navigation.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44

U.S.C. 3501-3520.).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act



addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy

Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the Federal Register (70 FR 15086).

Documents mentioned in this notice, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise paragraphs (b) and (c) in §117.1087 to read as follows:

§ 117.1087 Fox River

\* \* \* \* \*

(b) All drawbridges between mile 7.13 in DePere and mile 58.3 in Oshkosh, except the Canadian National Railroad Bridge at mile 55.72, shall open as follows:

(1) From April 27 through October 7, the draws shall open on signal, except between the hours of midnight and 8 a.m. when the draws shall open if at least 2-hours advance notice is given.

(2) From October 8 through April 26, the draws shall open if at least 12-hours advance notice is given.

(c) The draw of the Canadian National Railroad Bridge at mile 55.72 shall open on signal, except from October 8 through April 26 when the draw shall open if at least 12-hours advance notice is given.

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Dated: April 21, 2016

J. K. Little  
Captain, U.S. Coast Guard  
Commander, Ninth Coast Guard District  
Acting

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